

BRB No. 05-0147 BLA

GRACIE COUCH)	
(Widow of PLEASIE COUCH))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 08/17/2005
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (03-BLA-6158) of Administrative Law

¹ Claimant is Gracie Couch, the miner's widow. The miner, Pleasie Couch, filed a claim for benefits on January 15, 1976, which was dismissed by Administrative Law Judge Richard D. Mills on June 2, 1986 because the miner failed to attend the hearing without good cause. Director's Exhibit 1. The miner died on November 16, 1988 and claimant filed her survivor's claim on December 10, 2001, which was denied by the district director on April 3, 2003. Director's Exhibits 3, 7, 13. Claimant subsequently requested a hearing on April 8, 2003. Director's Exhibit 14.

Judge Daniel J. Roketenetz denying benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge found one and one-half years of qualifying coal mine employment. Decision and Order at 3. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718 and found that the evidence of record established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(c). Decision and Order at 4-7. The administrative law judge further found, however, that the evidence of record did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Decision and Order at 8. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in failing to find that the miner's death was due to pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's denial of benefits as supported by substantial evidence.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. *See* 20 C.F.R. §718.205(c)(5); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 1-135 (6th Cir. 1993).²

Pursuant to 20 C.F.R. §718.205, claimant alleges that, because the miner had pneumoconiosis and was totally disabled, the administrative law judge erred in failing to find

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 1, 4.

that the miner's death certificate was sufficient to carry claimant's burden of proof. Claimant also suggests that the administrative law judge "may have 'selectively analyzed' the evidence" Claimant's Brief at 3. We disagree.

The miner's death certificate listed the cause of his death as respiratory failure due to pneumonia due to carcinoma of the lung, and indicated that other conditions contributing to death were cerebrovascular accident and "Acute MI." Director's Exhibit 7. The death certificate further indicated that no autopsy was performed. *Id.*

The administrative law judge properly found that the death certificate fails to indicate that the miner's death was due to or hastened by pneumoconiosis. *See Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 1-135; *Trumbo*, 17 BLR 1-85; *Haduck*, 14 BLR 1-29; *Lafferty*, 12 BLR 1-190; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Kuchwara*, 7 BLR 1-167; Decision and Order at 8; Director's Exhibit 7. Additionally, the administrative law judge noted accurately that the record contains no evidence that the conditions listed on the death certificate were caused by exposure to coal dust.

Moreover, contrary to claimant's argument, a finding that the miner suffered from pneumoconiosis, coupled with claimant's assertion that he was totally disabled at the time of his death, is not sufficient to establish death due to pneumoconiosis. *See* 20 C.F.R. §§718.201, 718.205(c); *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 1-135; *Trumbo*, 17 BLR 1-85. Rather, claimant must specifically establish that the miner's death was due to pneumoconiosis or its complications, or that the pneumoconiosis was a substantially contributing cause of death. 20 C.F.R. §718.205(c); *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 1-135; *Trumbo*, 17 BLR 1-85.

Based on the foregoing, we affirm the administrative law judge's determination that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *see also Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 1-135. We therefore affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge